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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Appellant,

v.

ELIJAH DANIEL ANDERSON et al.,

Defendants and Respondents.

C045692

(Super. Ct. No. 62034264)

The People appeal from the dismissal of multiple drug-related charges against defendants Elijah Daniel Anderson and Bradley Soito-Nelson.<sup>1</sup> The trial court, which dismissed the case after granting defendants' motion to suppress evidence pursuant to Penal Code section 1538.5, concluded that the police's seizure of methamphetamine, weighing scales, and a loaded handgun without a serial number from defendants' motel room constituted a Fourth Amendment violation. The court reasoned that Anderson's consent to the warrantless search of the motel

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<sup>1</sup> The dismissal is appealable by the People. (Pen. Code, § 1238, subd. (a)(7); *People v. Superior Court* (1969) 276 Cal.App.2d 581, 585.)

room, which he occupied jointly with co-defendant Soito-Nelson, was "trumped" by the latter's prior refusal and thus barred the officers' entry. We disagree and shall reverse.

#### FACTS

When Roseville Police Officer Clinton Herndon observed a Ford Mustang traveling without taillights from a motel parking lot at 4:16 a.m. on February 26, 2003, he stopped the vehicle and asked its driver, Soito-Nelson, to produce identification. When neither Soito-Nelson nor his female passenger (Perkins) could do so, Officer Herndon proceeded to search defendant's person for weapons as well as the Mustang for evidence of identification. Although Soito-Nelson carried no weapons, Officer Herndon found two .45-caliber bullets, a bowie knife, and a handgun holster in the vehicle. However, he failed to locate defendant's identification. Soito-Nelson explained that he left his identification in his motel room at the Heritage Inn. Rather than arrest him immediately for a violation of Vehicle Code section 12951, Officer Herndon allowed Soito-Nelson to drive back to the Heritage Inn to retrieve his driver's license. Officer Herndon followed in his patrol car.

Officer Mark Miller, who had arrived at the scene of the traffic stop shortly after Officer Herndon, was also dispatched to the motel. He arrived at the Heritage Inn earlier than Soito-Nelson and Officer Herndon and proceeded to the front desk to confirm Soito-Nelson's room number. At that time he learned that the room had been rented in Soito-Nelson's name. The clerk then provided Officer Miller with the room number, room 225, and

a key. Officer Miller continued to the second floor of the motel where he observed a man (later identified as Anderson) holding a leather duffel bag and suspiciously crouched down behind a wall outside of room 225. As the man disappeared down the stairwell, Officer Miller pursued him unsuccessfully.

Officer Miller returned to room 225 where he was met shortly thereafter by Officer Herndon, Soito-Nelson, and Perkins. Soito-Nelson entered the room with his key, leaving the door halfway closed behind him, and went immediately to the same black duffel bag that Officer Miller had observed the man holding in the hallway minutes earlier. The bag was lying on the floor at the foot of the bed where Anderson was now sitting, and where Anderson later admitted to sleeping.

Soito-Nelson opened the bag and pulled out his driver's license, which he presented to Officer Herndon.

Anderson stood up at that time and walked outside to speak with Officer Miller. The door remained partially closed. Officer Herndon inquired about illegal activities in the room. When Soito-Nelson denied such a possibility, Officer Herndon asked for his consent to search the motel room. Soito-Nelson refused. Meanwhile, Officer Miller questioned Anderson, who admitted to staying and sleeping in room 225. When Officer Miller asked for Anderson's consent to search the motel room, he replied, "sure. I have nothing to hide."

With Anderson's consent, and without any protest from Soito-Nelson, the officers entered room 225 and began their search of the premises, which produced a glass methamphetamine

pipe and a loaded .45-calibur handgun with a defaced serial number. When the officers came upon the black leather duffel bag, Officer Herndon asked both defendants if it was theirs. Both denied ownership until Officer Herndon reminded Soito-Nelson that he was witnessed retrieving his driver's license from the bag earlier. Only then did Soito-Nelson claim ownership. Officer Herndon searched the duffel bag and found several bags of methamphetamine and two scales.

Defendants were charged by information with multiple violations of the Health & Safety and Penal Codes. (Health & Saf. Code, §§ 11378, possessing methamphetamine for sale--count one; 11377, subd. (a), possessing methamphetamine--count two; 11370.1, subd. (a), possessing methamphetamine while armed with a loaded, operable firearm--count three; 11550, subd. (a), being under the influence of controlled substance--count four; 11364, possessing a methamphetamine pipe--count five; Pen. Code, §§ 537e, subd. (a)(1), knowingly possessing a handgun for which serial number had been removed--count six; 12022, subd. (c), alleged Anderson was personally armed with a firearm in connection with count one; 12022, subd. (a)(1), alleged a principal was armed with a firearm in connection with counts one and two.) The trial court granted defendants' motion to suppress evidence pursuant to Penal Code section 1538.5 and subsequently dismissed the case.

The People appealed.

## DISCUSSION

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]" (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

The trial court based its conclusion that the search of defendants' motel room was invalid on the legal principles set forth in *People v. Oldham* (2000) 81 Cal.App.4th 1 (*Oldham*). In *Oldham*, the court held that a father who possessed "superior control" over his son in relation to their jointly occupied apartment could consent with apparent authority to a search of a particular room where the latter stayed, despite his son's prior refusal. (*Id.* at p. 10.) The *Oldham* court equated this "superior control" with the ability of the father to exclude his son from the apartment. (*Ibid.*) Applying this same reasoning in reverse to the facts of the case at bar, the trial court found a lack of evidence suggesting Anderson possessed joint control of the motel room, much less superior control over Soito-Nelson. Therefore, because Soito-Nelson possessed superior control over the motel room, Anderson's secondary

consent did not "trump" Soito-Nelson's initial refusal to allow the search.

Defendants urge us to uphold the trial court's decision, directing our attention to the United States Supreme Court's decision in *U.S. v. Matlock* (1974) 415 U.S. 164 (*Matlock*), which addressed the issue of voluntary consent to warrantless searches by third parties. In *Matlock*, the court held that "when the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected." (*Id.* at p. 171.)

Much of the present controversy between the parties involves the interpretation of this decisive language. On its surface, the text appears to support the prosecution's contention that the officers entered and searched legally since Anderson was sufficiently connected to the motel room and duffel bag for them to reasonably believe in his apparent authority to consent to their search. However, defendants contend that the holding is limited by additional qualifying language: "the consent of one who possesses common authority over premises or effects is valid against the *absent*, nonconsenting person with whom that authority is shared." (*Matlock, supra*, 415 U.S. 164,

170.) Defendants therefore conclude that Soito-Nelson's mere presence invalidated Anderson's consent. We are unconvinced. Defendants fail to cite even a single authority supporting their interpretation.

*Matlock, supra*, 415 U.S. 164, involved a defendant who was arrested and detained in the front yard of his home while police went to the front door to ask one of his co-habitants for consent to search. (*Id.* at p. 166.) She voluntarily consented to a search of the home, including a room which she and defendant shared. (*Ibid.*) The search produced incriminating evidence that the court suppressed. (*Id.* at pp. 167-168.) While holding that police may obtain valid consent from third parties with common authority over the premises or a sufficient relationship to them, the *Matlock* court extended the general legal principle to the specific facts at hand. Since the defendant was absent from the scene at the time consent was obtained from his co-occupant at the front door, the court concluded that the consent was valid against even the absent, non-consenting defendant. (*Id.* at p. 170.)

Defendants read *Matlock's, supra*, 415 U.S. 164, language to somehow imply that the consent of a third party is valid *only* against absent, non-consenting defendants. They are mistaken. The *Matlock* court was explicit in its holding, explaining the rationale behind third party consent in the following terms:

"[t]he authority which justifies the third-party consent . . . rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." (*Id.* at p. 171, fn. 7.)

While it is true, as defendants assert, that one co-occupant assumes the risk that another will consent to a search whenever he is absent, it is equally true that he assumes the same risk even while he is present. Such was the case in *People v. Haskett* (1982) 30 Cal.3d 841. There, police officers detained defendant on the front porch of his house. He refused consent to search the house. (*Id.* at p. 856.) However, defendant's wife consented to a search in defendant's presence, when he remained silent. (*Ibid.*) Our Supreme Court concluded, "Under these circumstances, there is no basis for defendant's contention that his wife's consent was inadequate. [Citations.]" (*Id.* at p. 857.)

The instant case is controlled by *Haskett*, *supra* 415 U.S. 164. Soito-Nelson was present when co-defendant Anderson consented to the search of their jointly occupied motel room. Rather than assert his superior control as the registered renter of the room to the officers and Anderson, disallowing the latter



to speak on his behalf, he stood without protest while Anderson consented. Soito-Nelson, then, assumed the risk of Anderson consenting when he allowed him to assert himself as one possessing equal authority and thus capable of consenting. (*Id.* at pp. 856-857.)

Given the totality of circumstances known to the officers at the time, as well as the trial court's finding that the officers were "forthright, truthful and candid," we conclude that they were reasonable in inferring Anderson's joint authority and accordingly relying upon his consent to search the motel room. Anderson checked into the motel room at the same time as Soito-Nelson and enjoyed unimpeded access to it. He admitted to Officer Miller that he stayed and slept in the room. Moreover, he kept his possessions there, including the black leather duffel bag at the foot of his bed. Because Anderson was initially spotted in the hallway outside the room with sole possession of the bag, and was found again with it in the room, Anderson was sufficiently connected to the bag for Officer Miller to believe that the scope of his consent to search the room included the bag. Most important, however, was that Anderson did not hesitate in asserting himself to the officers as a joint occupant by readily consenting in front of Soito-Nelson. Since Soito-Nelson did not object to the consent or communicate his superior authority over Anderson, either to him

or to the officers, it was reasonable for the officers to infer that Anderson was sufficiently connected to the room and duffel bag to consent to their search.

Accordingly, the officers' entry into and search of the motel room and duffel bag were legal within the Fourth Amendment. (*People v. Haskett, supra*, 30 Cal.3d 841, 857.)

DISPOSITION

The order granting the motion to suppress evidence and the subsequent dismissal of the case are reversed.

\_\_\_\_\_, J.  
SIMS

We concur:

\_\_\_\_\_, P.J.  
SCOTLAND

\_\_\_\_\_, J.  
BLEASE